

In the Matter of UNITED STATES RUBBER COMPANY and UNITED RUBBER WORKERS OF AMERICA LOCAL #110, AFFILIATED WITH THE C. I. O.

*Case No. R-2387.—Decided April 10, 1941*

**Jurisdiction:** rubber products manufacturing industry.

**Investigation and Certification of Representatives:** existence of question: refusal to accord union recognition; contract of indefinite duration which has been in effect for one year, no bar to; election necessary.

**Unit Appropriate for Collective Bargaining:** all regular employees in machinists department excluding employees in the maintenance department, and excluding supervisory, clerical, and office employees.

Minor supervisory employees, whose inclusion is disputed by two bona fide labor organizations, included in unit where they engage in manual labor for 50 per cent or more of their time; do not have power to hire or discharge; although salaried, receive overtime pay; and have uniformly been included in past bargaining contracts covering unit.

*Mr. E. M. Cushing*, of Indianapolis, Ind., for the Company.

*Mr. Jacob Weiss* and *Mr. Ezra Weiss*, of Indianapolis, Ind., for the U. R. W.

*Mr. L. O. Thomas*, of Battle-Creek, Mich., *Mr. W. H. Winko* and *Mr. Harry Collier*, of Indianapolis, Ind., and *Mr. Paul R. Hutchings*, of Washington, D. C., for the I. A. M.

*Miss Edna Loeb*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 18, 1940, January 6, 1941, and February 20, 1941, United Rubber Workers of America, Local No. 110, herein called the U. R. W., affiliated with the Congress of Industrial Organizations, filed a petition and amended petitions with the Regional Director for the Eleventh Region (Indianapolis, Indiana) alleging that a question affecting commerce had arisen concerning the representation of employees of United States Rubber Company, Indianapolis, Indiana, herein called the Company, and requesting an investigation and

certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On January 15, 1941, International Association of Machinists, Local No. 161 and District No. 90, herein called the I. A. M., affiliated with the American Federation of Labor, filed a petition to intervene in the proceeding. On February 20, 1941, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On March 4, 1941, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the U. R. W., and the I. A. M. Pursuant to the notice, a hearing was held on March 10, 1941, at Indianapolis, Indiana, before Colonel C. Sawyer, the Trial Examiner duly designated by the Chief Trial Examiner. The Company and the U. R. W. were represented by counsel, the I. A. M. by representatives, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the I. A. M. moved to dismiss the petition of the U. R. W., as amended, on the ground that no question concerning representation existed when the original petition was filed. The Trial Examiner referred this motion to the Board for ruling, and the motion is hereby overruled. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 20, 1941, the U. R. W. filed a brief. Pursuant to notice, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on March 21, 1941. The U. R. W. appeared by counsel, the I. A. M. by a representative, and both participated in the oral argument.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

United States Rubber Company is a New Jersey corporation engaged in the manufacture and sale of rubber products. Its principal office is located in New York City and it operates numerous plants throughout the United States, including one at Indianapolis, Indiana, with which this proceeding is concerned. During the last fiscal year the Company purchased for use at its Indianapolis plant raw ma-

terials valued at more than \$500,000. More than 85 per cent of these raw materials were shipped to the plant in Indianapolis from sources outside of Indiana. During the same year, the Company's sales of the products of the Indianapolis plant were in excess of \$750,000, more than 85 per cent of which were shipped to customers outside Indiana. The Company employs between 1,400 and 1,600 employees at this plant. For the purpose of this proceeding, the Company admits that it is engaged in interstate commerce within the meaning of the Act.

## II. THE ORGANIZATIONS INVOLVED

United Rubber Workers of America is a labor organization affiliated with the Congress of Industrial Organizations. Local No. 110 is a labor organization chartered by United Rubber Workers of America, and it admits to its membership employees of the Company.

International Association of Machinists, Local No. 161 and District No. 90, are labor organizations affiliated with the American Federation of Labor, which admit to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

On November 6, 1939, the Company and the I. A. M. entered into an exclusive recognition contract covering employees of the Company's machinists department. By its terms the contract was to remain in effect for one year and thereafter until changed, and it provided that negotiations for changes should be instituted upon 30 days' notice by either party. In October 1940 the I. A. M. notified the Company that it desired specified changes in the agreement, and in November and December 1940 it began to negotiate with the Company regarding such changes.

In December the U. R. W. met with the Company, claimed to represent a majority of the said employees, and sought to bargain for them. The Company refused to do so because of its contract with the I. A. M.

Shortly thereafter the Company informed the I. A. M. of the U. R. W. majority claim and of its petition herein, filed with the Regional Director on December 18, and the Company thereupon discontinued its negotiations with the I. A. M., stating that the contract must remain unchanged until the conclusion of the Board proceeding upon the said petition. Since the contract has been in effect for one year and is of indefinite duration, we find that it is no bar to a determination of representatives at this time.<sup>1</sup>

<sup>1</sup> See *Matter of Buffalo Pipe & Foundry Corporation and The Independent Sanitary Iron Moulders Union*, 26 N. L. R. B. 848; *Matter of Standard Steel Spring Company and Lodge No. 2143, etc.*, 18 N. L. R. B. 713; *Matter of Seiss Manufacturing Company and Committee for Industrial Organization*, 7 N. L. R. B. 481; *Matter of Metro-Goldwyn-Mayer Studios, etc.*, and *Screen Writers' Guild, Inc.*, 7 N. L. R. B. 662.

From the Regional Director's report, introduced into evidence, and the Trial Examiner's statement at the hearing, it appears that the U. R. W. and the I. A. M. have substantial representation among the employees in the Company's machinists department.<sup>2</sup>

We find that a question has arisen concerning the representation of employees of the Company.

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE APPROPRIATE UNIT

All the parties agreed that the appropriate unit should comprise "all regular employees in the Machinists Department, commonly known as Department No. 56, exclusive of employees in the Maintenance Department, supervisory, clerical, and office employees."

A question has arisen as to whether or not Timothy Lenahan and Vernon Stidd, employees in the machinists department, should be included in the unit. The U. R. W. desires the two employees to be excluded as supervisory employees and it apparently excludes them from its membership as such. The I. A. M. desires Lenahan and Stidd included in the unit. It admits them to membership and does not consider them eligible for honorary retiring cards granted to foremen by the I. A. M. The Company takes no position on this issue.

Lenahan and Stidd are called "supervisors," a designation which the Company applies to employees who are not foremen but have some supervisory duties. On its two night shifts in the machinists department, the Company employs two skeleton crews of about three men each, which crews are supervised not by foremen, as are the larger day crews, but by Lenahan and Stidd. Like gang leaders, the two employees direct the work of the crew members and also engage in ordinary manual labor, spending varyingly between 50 and 100 per cent of their time at such labor. They share with their crews the

<sup>2</sup> There are approximately 33 employees in the department. The Regional Director reported that 10 of these employees have signed membership application or authorization cards of both unions, and that including the 10 duplications, 16 employees have designated the U. R. W. and 23 have designated the I. A. M.. The Trial Examiner's statement shows that 32 employees are dues-paying members of the I. A. M. in good standing.

responsibility for proper performance of the work. Lenahan and Stidd may caution employees regarding neglect of duty and report repetitions thereof to a day foreman, but neither of them has the power to hire or discharge employees.

Lenahan and Stidd receive weekly salaries instead of the hourly wages paid to ordinary crew members, but like the latter, Lenahan and Stidd receive overtime pay for work over 40 hours per week. Since 1937 and possibly before, employees like Lenahan and Stidd have uniformly been included among machinists department employees covered by collective bargaining contracts between the Company and the I. A. M.<sup>3</sup> In view of this fact and the other circumstances disclosed, we find that Lenahan and Stidd belong in the bargaining unit.<sup>4</sup>

We find that all regular employees of the Company in the machinists department of its Indianapolis plant, which department is commonly known as Department No. 56, including Timothy Lenahan and Vernon Stidd, but excluding employees in the maintenance department, and excluding other supervisory, clerical, and office employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

We find that the question concerning representation which has arisen can best be resolved by an election by secret ballot. Pursuant to the desires of the parties and our usual practice, we shall direct that eligibility of employees to vote in the election be determined by the pay roll for the period next preceding our Direction of Election herein, subject to such limitations and additions as are set forth in the Direction.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of United States Rubber Company, Indianapolis, Indiana, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

<sup>3</sup> These contracts have excluded only "foremen and supervisors who perform no skilled or unskilled labor."

<sup>4</sup> *Matter of Certain-Teed Products Corporation and International Longshoremen's & Warehousemen's Union, Local 1-6*, 28 N. L. R. B. 915

2. All regular employees of the Company in the machinists department of its Indianapolis, Indiana, plant, which department is commonly known as Department No. 56, including Timothy Lenahan and Vernon Stidd, but excluding employees in the maintenance department, and excluding other supervisory, clerical, and office employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with United States Rubber Company, Indianapolis, Indiana, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Eleventh Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all regular employees of the Company in the machinists department of its Indianapolis, Indiana, plant, which department is commonly known as Department No. 56, whose names appear on the pay roll of the Company for the pay-roll period next preceding the date of this Direction of Election, including Timothy Lenahan and Vernon Stidd, and including employees who did not work during said pay-roll period because they were ill, on vacation, in the active military service or training of the United States, or temporarily laid off, but excluding employees in the maintenance department, other supervisory, clerical, and office employees, and employees who have since quit or been discharged for cause, to determine whether they desire to be represented for the purposes of collective bargaining by United Rubber Workers of America, Local No. 110, affiliated with the Congress of Industrial Organizations, by International Association of Machinists, Local No. 161 and District No. 90, affiliated with the American Federation of Labor, or by neither.